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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,370	07/29/2003	Darlene Hanington	T10193	8959
20451	7590	02/11/2005	EXAMINER	
GRANT R CLAYTON CLAYTON HOWARTH & CANNON, PC P O BOX 1909 SANDY, UT 84091-1909			HSIEH, SHIH YUNG	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/630,370	HANINGTON, DARLENE	
	Examiner Shih-yung Hsieh	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-76 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-69 is/are rejected.
 7) Claim(s) 70-76 is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____. |

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1. The disclosure is objected to because of the following informalities: page 13, line 6, numeral 133 should be 113.

Appropriate correction is required.

2. Claims 1, 20, 44, 59, 63, and 70 are objected to because of the following informalities:

The following phrases are indefinite:

claim 1, line 7, "if any"; lines 16-17, "can be"; line 22, "if";

claim 20, lines 11-12, "can be"; line 15, "if";

claim 44, lines 15-16, "can be";

claim 59, line 8, "any";

claim 63, last line, "if";

claim 70, line 6, "may be".

Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-20, 44, 53-67, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe (Note Values Music Blocks).

Roe's article published in the Artist Magazine in November 1985 disclosed the invention.

Regarding claim 1, Roe discloses a system comprising: at least one master block visually conveying to an observer a time signature (col. 1, lines 7 and 9), one of the at least one master block comprising a control reference feature having a benchmark dimension, and each of the remaining at least one master block comprising a control reference feature having a dimension relative to said benchmark dimension and its visually conveyed time signature (col. 1, lines 15-17); a plurality of cadence blocks (col. 1, line 10), each of the plurality of cadence blocks visually conveying to an observer a duration value, and each of the plurality of cadence blocks comprising a reference feature relative in dimension to its duration value and the benchmark dimension (col. 1, lines 12-15); wherein the musical rhythm in a given musical measure is determined correctly determined by comparing the dimension of the control reference feature of one of the at least one master block to the dimension of the reference feature of one or more of the plurality of cadence blocks to see if are equal (col. 1 lines 12-15).

Regarding claims 3 and 4, Roe discloses the claimed invention. The thicknesses of the blocks in relation to the control reference features are inherent in the disclosure (col. 1. lines 12-18).

Regarding claims 5-19, Roe discloses the claimed invention.

Regarding claims 20 and 44, see above since they are the same invention but recited in different language.

Regarding claims 53-67, and 69, the method steps are inherent in the system disclosed by Roe (col. 2, lines 1-16).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 21-43, 45-52, and 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Cohen (3,817,145).

Regarding claims 2, 21, Roe discloses the claimed invention except the at least one master block and the plurality of cadence blocks are comprised of thermoplastic.

Cohen teaches music blocks (8) made of thermoplastic for maintaining the color and protection from abuse (col. 3, lines 8-10). It would have been obvious to one having ordinary skill in the art to modify Roe's system as taught by Cohen to include the at least one master block and the plurality of cadence blocks being comprised of thermoplastic for the purpose of maintaining the color and protection from abuse.

Regarding claim 22-26, 30-34, Roe discloses the claimed invention.

Regarding claim 27, Roe discloses the claimed invention including a height of about 3 inches for a set of 48 blocks except that the thickness of the master block is about 1.25 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a thickness of 1.25 inches, since it has

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been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 28 and 29, see above.

Regarding claim 35, Roe discloses the claimed invention except the second plurality of blocks are comprised of thermoplastic.

Cohen teaches music blocks (8) made of thermoplastic for maintaining the color and protection from abuse (col. 3, lines 8-10). It would have been obvious to one having ordinary skill in the art to modify Roe's system as taught by Cohen to include the second plurality of blocks being comprised of thermoplastic for the purpose of maintaining the color and protection from abuse.

Regarding claims 36-43, Roe discloses the claimed invention and see above.

Regarding claim 45 and 68, see above.

Regarding claims 46 and 47, Roe discloses the claimed invention (col. 2, lines 17-19, and lines 14-16).

Regarding claim 48-52, see above.

7. Claims 70-76 would be allowable if rewritten to overcome the objection(s) set forth in this Office action.

8. The claims are allowable over the prior art for at least the reason that the prior art fails to reasonably teach or suggest in claim 70 that a system for teaching musical

rhythm comprising a plurality of beat mats laid out to indicate a correct number of beats in a measure for the time signature as set forth in the claimed combination.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shih-yung Hsieh whose telephone number is 571-272-2065. The examiner can normally be reached on 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

syh



SHIH-YUNG HSIEH
PRIMARY EXAMINER